

## **REMARKS**

Claims 1, 2, 4-9, 12-32 and 35-61 are pending in this application. Claims 1, 2, 9, 15, 38 and 50-61 are rejected under 35 U.S.C. 102(e) as being anticipated by Walsh et al. (US 6,144,848). Claims 4-8, 12-14, 16-32, 35-37 and 39-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al. (US 6,144,848). Applicant respectfully traverses these rejections.

By this Amendment, claims 1, 2, 12, 13, 32, 35, 36 37 and 53 are amended. Claims 23, 24, 25, 46, 47 and 48 are withdrawn from consideration, but applicant reserves the right to file one or more continuation applications directed to the subject matter of these withdrawn claims. New claims 62-65 are added. In view of the amendments and remarks set forth herein, reconsideration is respectfully requested.

### **I. Independent Claims**

The claims of this application have been rejected under Section 102 or Section 103(a) based upon Walsh et al. (US 6,144,848). Walsh et al. teach a handheld remote control wand, having a bar code or similar reader, for controlling a host computer server. Walsh et al. further teach, for example, using the wand to scan a bar code in printed media to interactively obtain at the wand a multi-media informational advertisement or message from the secure remote host server. While the wand may be incorporated with a cellular telephone, Walsh et al. require a specialized cellular phone having a bar code (or similar ) scanner. The remote host server runs specific program applications for processing bar code command messages received from the wand. The user may initiate an order session in which the user purchases goods or services by sending bar code command messages to the remote server for remote order entry.

In contrast, Applicant's presently claimed invention is directed to a wireless portable device, such as a conventional cellular telephone, for making transactions at a point of sale terminal. The presence or use of a bar code scanner (or reader, as it is also called) in the device is unnecessary. Accordingly, unlike the Walsh et al. teachings, Applicant's invention does not require use of a specialized wand having a bar code scanner/reader. Additionally, unlike the remote order entry system of Walsh et al., Applicant's invention (as defined in some claims) enables purchasers to purchase products at local point of sale terminals of a variety of types (e.g., retail check-outs counters, vending machines, gas pumps, fast food drive through terminals, restaurant terminals, etc.) at which goods and services are delivered directly to the purchaser and the time and location of the purchase transaction.

With these significant and fundamental differences in mind, Applicant now addresses the Examiner's rejections in light of Applicant's present amendments.

**Claims 1 and 2.** Independent claims 1 and 2 are amended to include the limitation of “a purchase transaction at a point of sale terminal performed without use of an electromagnetic detector or a bar code reader in said device”. By this amendment, applicant’s presently claimed inventions are clearly distinguished from the teachings of Walsh et al. Walsh et al. teach only the use of a specialized device as a wand having a bar code reader (or similar element) for scanning a bar code (or detecting electromagnetically) and sending bar code command messages to a remote, host server during a remote order entry session. As such, Walsh et al. clearly do not teach or suggest a device or the ability to perform a purchase transaction “at a point of sale terminal” “without use of a detector or bar code reader in said device”. Applicant believes that this reason is clearly sufficient to overcome the rejection to claims 1 and 2, but Applicant reserves the right to make additional arguments for patentability.

**Claims 60 and 61.** Independent claims 60 and 61 use the language “consisting of” in the preamble. Walsh et al. teach a wand device that requires a bar code reader (or electromagnetic detector) in the device to scan a bar code (or detect an element) and to send a bar code command message to a host server. Walsh et al. do not teach or suggest the inventions “consisting of” each of the limitations of claims 60 and 61. Accordingly, the rejections of claims 60 and 61 is believed to be improper and should be withdrawn.

## **II. Dependent Claims**

With respect to dependent claims depending either directly or indirectly from claim 1, claim 2, claim 60 or claim 61, applicant believes that each of these dependent claims is allowable by virtue of its dependence from an allowable base claim and also in view of the additional limitation(s) set forth in each dependent claim.

**Claims 5-8.** With particular respect to claims 5-8 (which depend directly or indirectly from independent claim 1) and claims 28-31 (which depend directly or indirectly from independent claim 2), each of which has been rejected under Section 103 based upon Walsh et al., Applicant finds nothing in Walsh et al. that teaches a “device” that is a “portable computer”, “a laptop or notebook computer”, “a personal digital assistant”, or “a pager”. The Examiner acknowledges that Walsh et al. do not teach these types of communications devices but, lacking any citation, the Examiner contends in paragraph 5 of the Office Action that “these types of wireless communication device are old and well known in the business art.” Applicant does not concede that wireless portable, laptop or notebook computers are known in the prior art and, in particular, Applicant knows of no teaching or suggestion in the record of devices of such types being used to wirelessly transmit data indicative of monetary units or an account from a wireless device to a point of sale terminal. Accordingly, Applicant believes these claims are allowable and respectfully requests reconsideration of these claims.

**Claims 12 and 35.** With particular respect to claims 12 and 35, as amended for clarity, Applicant requests reconsideration because Walsh et al. clearly do not teach or suggest transmitting data indicative of a selected amount of monetary units or data indicative of an

account “directly to said point of sale terminal via a short range wireless link”. The invention(s) claimed in claims 12 and 35 are fundamentally different from anything disclosed or suggested by Walsh et al. Walsh et al. teach establishing a secure telecommunications path (i.e., a telephone call) between a bar code reader device used as a wand and a remote host server. Walsh et al. teach away from wirelessly linking a non-bar code reader device directly to a point of sale terminal via a short range wireless link for transmission of data indicative of monetary units or an account directly to the point of sale terminal, as claimed.

Applicant’s claimed invention(s) of claims 12 and 35 has significant differences from, and advantages over, the limited approach of Walsh et al. For example, unlike Walsh et al.’s teachings, Applicant’s claimed invention in each of claims 12 and 35 does not require the presence or use of a bar code scanner (or electromagnetic detector) in the device. Further, by use of a short range wireless link (such as a Bluetooth link, for example), Applicant’s claimed invention does not require connection of the device to a remote server via a telecommunications path such as a telephone call that may require a subscription fee or use of an allotment of subscriber time or data. Further, unlike the teachings of Walsh et al., the invention(s) claimed in claims 12 and 35 enable(s) an immediate purchase transaction, including goods/service delivery, at the point of sale terminal at which the purchaser is physically present. For at least these reasons, Applicant believes that claims 12 and 35 are clearly allowable over the art of record.

**Claims 13 and 36.** With particular respect to claims 13 and 36, Applicant requests reconsideration because Walsh et al. clearly do not teach or suggest transmitting data indicative of a selected amount of monetary units or data indicative of an account “to said point of sale terminal via a local wireless area network”. The invention(s) claimed in claims 13 and 36 are fundamentally different from anything disclosed or suggested by Walsh et al. Walsh et al. teach establishing a secure telecommunications path between a bar code reader device used as a wand and a remote host server. Walsh et al. teach or suggest absolutely nothing about wirelessly linking a non-bar code reader device to a point of sale terminal via a local wireless area network for transmission of data indicative of monetary units or an account, as claimed. Applicant believes that claims 13 and 36 are clearly allowable over the art of record.

**Claims 16 and 39.** With particular respect to claims 16 and 39, Applicant requests reconsideration because Walsh et al. do not teach or suggest a limitation that the user of a device “must be identified by input of the user’s voice into said device before said purchase transaction at said point of sale terminal is completed.” In fact, Applicant does not find any specific comments of the Examiner in the Office Action that are directed to these claims or the subject matter of these claims.

**Claims 17-22 and 40-45.** With particular respect to claims 17-22 and 40-45, the Examiner acknowledges in paragraph 5 of the Office Action that “Walsh does not explicitly disclose a specific point-of-sale” terminal. Indeed, Walsh et al. disclose only a remote host server that must run specialized applications for receiving and decoding command messages from the wand device. Accordingly, Walsh et al. actually teach away from applicant’s presently

claimed point of sale terminals. In particular, Applicant traverses the Examiner's comment that a "television" is a known point of sale terminal. There is no known teaching or suggestion of this in the art of record and Walsh et al.'s remote "host server" is certainly not a television.

Applicant's presently claimed invention of a portable wireless device for making transactions on a television is fundamentally different from anything taught or suggested by Walsh et al.

Additionally, the teachings of Walsh et al. teach away from the use of a device for making a purchase transaction not performed with a bar code (or similar) reader at a local point of sale terminal such as the claimed vending machine, fast-food drive through, a gas pump, a retail check-out station, or a restaurant payment terminal. Again, Walsh et al.'s teachings require a remote ordering system, using a specially equipped wand and a specially equipped host server for receiving and reading bar code command messages from the wand, for coordinating remote order entry and subsequent product shipment to the purchaser. Walsh et al. provide no teaching or ability to purchase goods at a local point of sale terminal of the type at which the purchaser is physically present, such as the claimed vending machine, fast-food drive through terminal, gas pump, retail check-out station, or restaurant payment terminal. For at least these reasons, Applicant respectfully requests that the rejections of claims 17-22 and 40-45 be withdrawn.

**Claims 26 and 49; claims 55 and 57.** With particular respect to claims 26 and 49, each of which include the limitation of "an electronic receipt indicative of the purchase transaction" being transmitted to the device, and claims 55 and 57, each of which include the limitation of displaying an electronic receipt on a display of the device, Applicant finds no such teaching in Walsh et al. The Examiner states that Walsh et al. teach a display screen "that is also capable of displaying information on the order and displaying an electronic receipt as claimed (col. 15, lines 33-44)." However, the cited text of the Walsh et al. reference teaches only updating "the balance in memory of the smart card", not sending a receipt for a purchase to the bar code reader device. Accordingly, Applicant believes that these rejections should be withdrawn.

**Claims 50 and 51.** With particular respect to claims 50 and 51, each of which claims the limitation of "said device not having a smart card engine chip", the Examiner concedes that Walsh et al. disclose a smart card engine chip but further contends that Walsh et al. "teach a processor that is capable of selecting the amount of monetary units from the memory for transmission to the point of sale" terminal. The reference to Walsh et al. cited by the examiner (Fig. 12A, 114) appears to be in error and/or does not support the examiner's statement and Applicant does not find such a teaching in Walsh et al. Applicant, therefore, respectfully requests reconsideration of these claims.

**Claims 54 and 56.** With particular respect to claims 54 and 56, Walsh et al. does not teach or suggest transmitting monetary or account data "via a short message service". Accordingly, Applicant believes that the rejections of these claims should be withdrawn.

### III. New Claims

New claims 62-65 are added. Entry and allowance is requested. Each claim is directed to the same subject matter, but depends from a different base claim. These claims include the limitation(s):

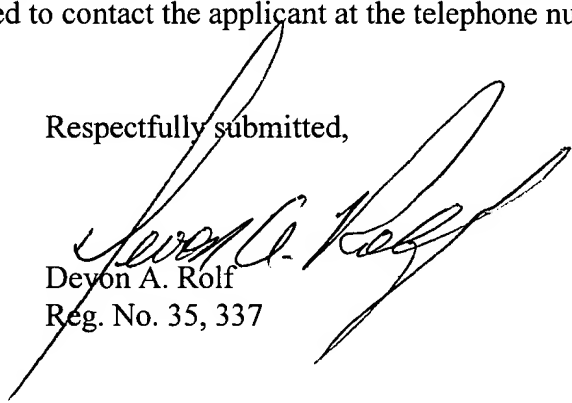
wherein said device is operated, by a purchaser, in physical proximity to said point of sale terminal during said purchase transaction and wherein goods or services purchased during said purchase transaction are delivered to said purchaser at a location corresponding to said point of sale terminal and at a time of said purchase transaction.

As discussed above, Walsh et al. not only fail to teach such a limitation, they teach away from Applicant's invention as defined in claims 62-65. The Walsh et al. system is a wand device (with scanner or detector) for communicating with and sending command messages to a secure remote host server. As taught by Walsh et al., any order made with such a system is a remote order entry that requires subsequent shipment of the purchased goods or services to the purchaser. Walsh et al. teach and suggest nothing that enables a purchaser to use an ordinary handheld device, such as a cellular telephone, to purchaser goods or services at a physically present point of sale terminal at which the purchased goods or services are delivered to said purchaser at the time and location of the purchase transaction.

### IV. Conclusion

In view of the foregoing amendments and remarks, reconsideration and allowance is respectfully requested. Should the examiner have any questions or wish to discuss this application with the applicant, he is invited to contact the applicant at the telephone number listed below.

Respectfully submitted,

  
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